

UINTAH MOUNTAIN CLUB

IBLA 88-54

Decided January 5, 1990

Appeal from a decision of the District Manager, Vernal District, Utah, Bureau of Land Management, approving off-road vehicle designations for the district.

Set aside in part, affirmed in part.

1. Administrative Procedure: Administrative Review-- Federal Land Policy and Management Act of 1976: Land Use Planning

A BLM decision implementing a resource management plan will be affirmed on appeal if the decision is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons for modification or reversal.

2. Federal Land Policy and Management Act of 1976: Land Use Planning

Pursuant to 43 CFR 1610.5-3(a), all resource management authorizations and actions, as well as budget or other action proposals and subsequent more detailed or specific planning, shall conform to the approved resource management plan. A BLM off-road vehicle designation which does not conform to the applicable, approved resource management plan shall be set aside.

3. Federal Land Policy and Management Act of 1976: Wilderness

BLM's decision to allow use of off-road vehicles in wilderness study areas will be affirmed where appellant has failed to show that such use will impair wilderness suitability or cause undue or unnecessary degradation.

APPEARANCES: Clay Johnson, Vernal, Utah, for Uintah Mountain Club.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Uintah Mountain Club (UMC) has appealed from the September 11, 1987, decision by the District Manager, Vernal District, Bureau of Land

Management (BLM), to proceed with proposed off-road vehicle (ORV) designations in the district as described in a final environmental assessment (FEA). The FEA designates 5,840 acres as closed to ORV use, 1,692,694 acres as open to ORV use, and 36,890 acres as open to limited ORV use.

Prior to its decision, BLM prepared a draft environmental assessment, held public meetings, and accepted written comments. The FEA, dated September 14, 1987, concludes that the proposed action with recommended mitigating measures will not have a significant impact on the human environment and that, therefore, an environmental impact statement (EIS) is not required.

The vast majority of the land encompassed in the 1985 Book Cliffs Resource Management Plan (BCRMP) is included in the Vernal District. The Vernal District also encompasses land covered by three management framework plans (MFP's). The file forwarded by BLM does not include the BCRMP or any of the MFP's; however, appellant has attached certain photocopied pages from the BCRMP (Statement of Reasons (SOR) Exh. 1).

With its SOR appellant has included various photographs and documents which establish that the club and its members utilize land affected by the travel designation. Thus, UMC has established that it is adversely affected by the BLM decision. Desert Survivors, 80 IBLA 111, 113 (1984). Moreover, appellant has been actively involved in formulation of the travel designation, thereby ensuring that it is a party to this case. Headwaters, 33 IBLA 91, 94 (1977). BLM has not challenged appellant's standing before this Board and we perceive no impediment to it. Therefore, we conclude appellant has standing. 1/

In its SOR UMC argues that, with respect to closure of the White River Canyon, the proposed action is inconsistent with 43 CFR Part 8340 and Executive Order (EO) No. 11644, 3 CFR 332 (1974), 42 U.S.C. § 4321 note (1982), as amended by EO No. 11989, 3 CFR 120 (1977). Specifically, appellant contends that BLM has drawn the boundaries of the closed area too close to the river, thus inadequately protecting soil, wildlife, and canoeists from conflicts with ORV's.

Appellant refers to section 3 of EO No. 11644 which states that agencies shall promulgate ORV regulations requiring:

that the designation of such areas and trails shall be in accordance with the following --

(1) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, or other resources of the public land,

1/ Appellant's SOR also includes a request for "an immediate stay on preparation of the travel plan by the Vernal District, and on ORV use in the area under appeal until resolution of this case." In the absence of any analysis or information in support of the stay request, such motion was denied by order dated Jan. 22, 1988.

(2) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats,

(3) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands * * *.

UMC contends that BLM has failed to minimize impacts on the White River environment as mandated in EO No. 11644 and similar language at 43 CFR 8342.1. Appellant states that small draws and washes leading into the canyon are wildlife access routes and consist of highly erodible soils, yet are not closed to ORV use, and that ORV conflicts with raptors and with other recreational uses of the canyon are not minimized. Finally, appellant contends that BLM should expand the boundaries of the area closed to ORV use to coincide with the boundaries drawn by UMC in its 1985 wilderness proposal for the White River Canyon. Appellant has attached a large, topographical map of the canyon area with the club's proposed boundaries, the boundaries from BLM's travel designation, and the limits of threatened, endangered, or sensitive plant habitat delineated (SOR Exh. 3).

[1] A BLM management decision implementing a resource management plan (RMP) will be affirmed if the decision is based on a consideration of all relevant factors and is supported by the record, absent a showing of clear reasons for modification or reversal. Albert Yparraguirre, 105 IBLA 245, 248 (1988); Wilderness Society, 90 IBLA 221, 232 (1986).

UMC indicates that it would close to ORV use a greater area of land around the White River Canyon than was closed by BLM. Appellant states that it disagrees with BLM's decision and that it would have weighed the competing interests differently; however, these are merely differences of opinion and are not grounds for reversal on appeal. John Schandelmeier, 56 IBLA 284, 287 (1981). UMC does not allege that BLM failed to consider any relevant factors or that BLM's decision is unsupported by the record.

The FEA and those portions of the BCRMP and its EIS which appear in the record fail to suggest any reversible error in BLM's decision as to the White River Canyon area. The FEA specifically addresses the effects of the ORV designation on the soil, other recreation, and wildlife, including raptors (FEA at 43). Under the BCRMP, 5,250 acres in the White River Canyon would be closed to ORV's; the disputed BLM decision closes 5,120 acres. Thus, appellant has established no grounds for reversal of BLM's travel designation with respect to the White River Canyon area.

UMC contends that the BCRMP would have limited ORV use on large segments of land which the BLM vehicle designation opens to unlimited use. Appellant's exhibits indicate that the BCRMP would close 6,400 acres to ORV use, open 526,000 acres, and allow limited use on 547,600 acres. See Exhibit 1 BCRMP at 57. Comparison of the respective maps reveals that all of the land which the BCRMP designated for closure and virtually all of the land which it designated for limited use falls within the Vernal District. Yet, the FEA for ORV designations in the Vernal District allows limited use of ORV's for only 36,890 acres, a significant deviation from the BCRMP,

which calls for limited use on a total of 547,600 acres. In the FEA, BLM explains these differences as simply the product of allowable phased implementation of the BCRMP. UMC contends BLM's explanation for the differences is contrary to the BCRMP, 43 CFR Part 8340, and EO No. 11644.

[2] Pursuant to 43 CFR 1610.5-3,

(a) All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning, shall conform to the approved plan.

Appellant has identified a significant inconsistency between the BCRMP and the ORV travel designations. BLM recognizes this inconsistency in its FEA and explains that it is implementing the BCRMP in phases. The FEA quotes the Record of Decision, BCRMP, page 1 as stating the following:

The decision presented in Chapter 2 of this plan will be implemented over a period of years. The ability of the Vernal Dis-strict to complete the identified projects is directly dependent upon the BLM budgeting process. If insufficient funding is appropriated for any given year, some delays in the completion schedule may result. The priorities for accomplishment will be reviewed annually and may be revised based upon changes in law, regulations, policy, or economic factors such as cost effectiveness of projects.

(FEA at 1). 2/

The language quoted by BLM authorizes delays in implementation and changes in implementation priorities; however, it does not allow for significant changes in the plan. The FEA does not simply put travel designations into effect at a later time than called for on pages 61 and 62 of the BCRMP; rather, it puts different travel designations into effect. 3/

2/ The FEA also quotes various portions of the MFP's in support of its phased implementation. However, as MFP's are obsolete once an RMP is adopted, 43 CFR 1610.8, Southern Utah Wilderness Alliance, 111 IBLA 207, 211 (1989), the MFP's for the Vernal District have no relevance to appellant's argument concerning failure to follow the BCRMP.

3/ In addition, we note it is not clear from the record that BLM's efforts to implement a series of ORV designations, rather than implementing the designations in the BCRMP at the outset, would result in cost savings. Although in the years before the BCRMP is totally implemented, BLM may save money in enforcement, it is clear that other costs are increased by a series of changes in the designations. For example, the cost of preparation of the ORV designations, which is \$24,000 according to the chart on pages 61 and 62 of the BCRMP, and the cost of publishing designations would have to be repeated at each phase of implementation.

Moreover, in National Wildlife Federation v. Morton, 393 F. Supp. 1286 (D.C. 1975), the District Court declared invalid BLM's initial regulations implementing EO No. 11644, stating that an "open" designation creates a subtle but real presumption in favor of ORV use. Once land is declared open to ORV use,

[f]uture designations will not be made in the context of applying the required criteria to decide whether specific areas and trails should be opened or closed to ORV use. Instead, authorized officers will be required to employ the criteria in determining whether a specific area or trail's existing "open" status should be changed to "closed" or "restricted." [Emphasis in original.]

393 F. Supp. at 1292. A similar effect may hinder the redesignation of land to comply with the BCRMP.

In addition, EO No. 11644, section 3, requires that agency heads set a deadline for completion of ORV designations. Although the BLM decision implements a set of ORV designations, it is not clear that those designations are in accordance with the EO. The BCRMP imposes the least restriction possible upon ORV's while still protecting resources such as wildlife, wild horses, threatened and endangered species, cultural and recreational sites, water quality, soils and vegetation (BCRMP EIS at 80; BCRMP Record of Decision at 57). EO No. 11644 requires protection of such resources, as earlier noted, yet the FEA adopts substantially fewer restrictions than those deemed necessary in the BCRMP.

Thus, we find that BLM was unauthorized to adopt its travel designation without first amending the BCRMP, 43 CFR 1610.5-5, Southern Utah Wilderness Alliance, supra, and this matter is therefore set aside and remanded.

Appellant also maintains that the ORV designations fail to adequately protect the wilderness study areas (WSA's) in the Vernal District. UMC contends that although WSA's may not be closed to ORV use solely because of their WSA status, BLM is authorized to limit ORV use in these areas. Therefore, appellant urges that BLM designate WSA's as open to ORV use only on existing roads. 4/

[3] Pursuant to 43 U.S.C. § 1782(c), WSA's are to be managed so as not to impair their suitability for preservation as wilderness and to prevent unnecessary or undue degradation of the lands and their resources. BLM set forth guidelines for management of WSA's in its "Interim Management

4/ There is an apparent inconsistency between UMC's suggestion that ORV's be limited to roads in the WSA's and the fact that WSA's are by definition roadless. See 43 U.S.C. § 1782 (1982). The analysis below pertains whether appellant is suggesting what amounts to a closure of WSA's to ORV's; utilizing the word "roads" when referring to ways and trails; or referring to cherrystem roads, which are actually outside WSA's. See C & K Petroleum Co., 59 IBLA 301 (1981) (distinguishing between roads within a WSA, cherrystem roads, and ways and trails).

Policy and Guidelines for Land Under Wilderness Review" (IMP). 44 FR 72014 (Dec. 12, 1979). The IMP states, "The use of motor vehicles and motorized equipment does not necessarily impair wilderness suitability, if the use is on existing access routes or elsewhere so long as it does not cause impacts inconsistent with the reclamation requirements * * *." 44 FR 72020. Pursuant to the IMP, ORV use may be permitted on existing ways and trails and within areas designated as open to ORV use prior to October 21, 1976. The IMP also provides that no land shall be designated as closed to ORV use solely because it is under wilderness review, but if increasing impacts threaten to impair wilderness suitability, the land may be closed to the type of vehicles causing the problem. 44 FR 72024.

In the FEA BLM states, "Monthly IMP surveillance and monitoring efforts being conducted on WSAs in the district show almost no ORV use occurring on these important areas. Based on this information, it is not necessary to limit use in the WSAs at this time" (FEA at 5). Page 278 of the BCRMP EIS states, "[N]o ORV use is occurring that is impairing wilderness suitability. Because of a lack of impact to wilderness suitability, no restrictive ORV designations were made."

UMC neither alleges nor shows that ORV use is impairing wilderness suitability or causing undue or unnecessary degradation in areas under wilderness review. Thus, appellant has failed to establish error in BLM's decision with respect to the WSA's in the Vernal District. California Wilderness Coalition, 98 IBLA 314, 317 (1987).

Accordingly, pursuant to the authority granted to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision is set aside and remanded with respect to its ORV designations for the BCRMP and affirmed with respect to designations for the White River Canyon and the WSA's.

John H. Kelly

Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge